

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 536

AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-3.5-5-3, AS AMENDED BY HEA 1625-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The PERF board shall establish alternative investment programs within the fund, based on the following requirements:

- (1) The PERF board shall maintain at least one (1) alternative investment program that is an indexed stock fund, one (1) alternative investment program that is a bond fund, and one (1) alternative investment program that is a stable value fund.
- (2) The programs should represent a variety of investment objectives.
- (3) The programs may not permit a member to withdraw money from the member's account, except as provided in section 6 of this chapter.
- (4) All administrative costs of each alternative program shall be paid from the earnings on that program.
- (5) A valuation of each member's account must be completed as of:

(A) the last day of each quarter; **or**

(B) **a time that the board may specify by rule.**

(b) A member shall direct the allocation of the amount credited to the member among the available alternative investment funds, subject

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to the following conditions:

(1) A member may make a selection or change an existing selection under rules established by the PERF board. The PERF board shall allow a member to make a selection or change any existing selection at least once each quarter.

(2) The PERF board shall implement the member's selection beginning the first day of the next calendar quarter that begins at least thirty (30) days after the selection is received by the PERF board **or an alternate date established by the rules of the board.** This date is the effective date of the member's selection.

(3) A member may select any combination of the available investment funds, in ten percent (10%) increments **or smaller increments that may be established by the rules of the board.**

(4) A member's selection remains in effect until a new selection is made.

(5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on the market value on the effective date.

(6) If a member does not make an investment selection of the alternative investment programs, the member's account shall be invested in the PERF board's general investment fund.

(7) All contributions to the member's account shall be allocated as of the last day of the quarter in which the contributions are received **or at an alternate time established by the rules of the board** in accordance with the member's most recent effective direction. The PERF board shall not reallocate the member's account at any other time.

(c) When a member transfers the amount credited to the member from one (1) alternative investment program to another alternative investment program, the amount credited to the member shall be valued at the market value of the member's investment, as of the day before the effective date of the member's selection **or at an alternate time established by the rules of the board.** When a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date **or at an alternate time established by the rules of the board.**

(d) The PERF board shall determine the value of each alternative program in the defined contribution fund, as of the last day of each

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calendar quarter, as follows:

- (1) The market value shall exclude the employer contributions and employee contributions received during the quarter ending on the current allocation date.
- (2) The market value as of the immediately preceding quarter end date shall include the employer contributions and employee contributions received during that preceding quarter.
- (3) The market value as of the immediately preceding quarter end date shall exclude benefits paid from the fund during the quarter ending on the current quarter end date.

SECTION 2. IC 5-10.2-2-3, AS AMENDED BY P.L.2-2006, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The annuity savings account consists of:

- (1) the members' contributions; and
- (2) the interest credits on these contributions in the guaranteed fund or the gain or loss in market value on these contributions in the alternative investment program, as specified in section 4 of this chapter.

Each member shall be credited individually with the amount of the member's contributions and interest credits.

(b) Each board shall maintain the annuity savings account program in effect on December 31, 1995 (referred to in this chapter as the guaranteed program). In addition, the board of the Indiana state teachers' retirement fund shall establish and maintain a guaranteed program within the 1996 account. Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks and bonds) and take other actions necessary to fulfill its duty as a fiduciary of the annuity savings account, subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 5-10.4-3-10.

(c) Each board shall establish alternative investment programs within the annuity savings account of the public employees' retirement fund, the pre-1996 account, and the 1996 account, based on the following requirements:

- (1) Each board shall maintain at least one (1) alternative investment program that is an indexed stock fund and one (1) alternative investment program that is a bond fund.
- (2) The programs should represent a variety of investment objectives under IC 5-10.3-5-3.
- (3) No program may permit a member to withdraw money from the member's account except as provided in IC 5-10.2-3 and IC 5-10.2-4.

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(4) All administrative costs of each alternative program shall be paid from the earnings on that program or as may be determined by the rules of each board.

(5) **Except as provided in section 4(e) of this chapter**, a valuation of each member's account must be completed as of:

(A) the last day of each quarter; or

(B) another time as each board may specify by rule.

(d) The board must prepare, at least annually, an analysis of the guaranteed program and each alternative investment program. This analysis must:

(1) include a description of the procedure for selecting an alternative investment program;

(2) be understandable by the majority of members; and

(3) include a description of prior investment performance.

(e) A member may direct the allocation of the amount credited to the member among the guaranteed fund and any available alternative investment funds, subject to the following conditions:

(1) A member may make a selection or change an existing selection under rules established by each board. A board shall allow a member to make a selection or change any existing selection at least once each quarter.

(2) The board shall implement the member's selection beginning the first day of the next calendar quarter that begins at least thirty (30) days after the selection is received by the board or an alternate date established by the rules of each board. This date is the effective date of the member's selection.

(3) A member may select any combination of the guaranteed fund or any available alternative investment funds, in ten percent (10%) increments or smaller increments that may be established by the rules of each board.

(4) A member's selection remains in effect until a new selection is made.

(5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on:

(A) for an alternative investment program balance, the market value on the effective date; and

(B) for any guaranteed program balance, the account balance on the effective date.

All contributions to the member's account shall be allocated as of the last day of that quarter or at an alternate time established by the rules of each board in accordance with the member's most

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recent effective direction. The board shall not reallocate the member's account at any other time.

(f) When a member who participates in an alternative investment program transfers the amount credited to the member from one (1) alternative investment program to another alternative investment program or to the guaranteed program, the amount credited to the member shall be valued at the market value of the member's investment, as of the day before the effective date of the member's selection or at an alternate time established by the rules of each board. When a member who participates in an alternative investment program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus contributions received after that date or at an alternate time established by the rules of each board.

(g) When a member who participates in the guaranteed program transfers the amount credited to the member to an alternative investment program, the amount credited to the member in the guaranteed program is computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the quarter preceding the effective date of the transfer. However, each board may by rule provide for an alternate valuation date. When a member who participates in the guaranteed program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus any contributions received since that date plus interest since that date. However, each board may by rule provide for an alternate valuation date.

SECTION 3. IC 5-10.2-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) **Except as provided in subsection (e)**, interest shall be credited and compounded at least annually on all amounts credited to the member in the guaranteed program. For the guaranteed program, the board shall annually establish an interest credit rate equal to or less than the investment income earned.

(b) **Except as provided in subsection (e)**, the market value of each

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alternative investment program shall be allocated at least annually to the members participating in that program.

(c) Contributions to the guaranteed program and the alternative investment programs shall be invested as of the last day of the quarter in which the contributions are received **or at an alternate time established by the rules of each board.** Contributions to the guaranteed program shall begin to accumulate interest at the beginning of the quarter after the quarter in which the contributions are received **or at an alternate time established by the rules of each board.**

(d) When a member retires or withdraws with a balance in the guaranteed program, a proportional interest credit determined by the board shall be granted for the period elapsed since the last interest date on that balance.

(e) **This subsection applies whenever the board is required to establish an interest or earnings rate in order to credit interest or earnings to an omitted contribution to a member's annuity savings account. As used in this subsection, "omitted contribution" means a contribution contributed by or on behalf of a member under IC 5-10.3-7-9 or IC 5-10.4-4-11 that is received by the board after the time required by IC 5-10.3-7-12.5 or IC 5-10.4-7-6(b)(1). Notwithstanding any law to the contrary, each board may by rule specify:**

- (1) a single composite interest rate and the period to which the rate applies for the purpose of computing the interest credits on a member's contributions (including omitted contributions) in the guaranteed fund; and**
- (2) a single composite earnings rate for the gain or loss in market value for each alternative investment program and the period to which the rate applies for the purpose of computing the gain or loss in market value on a member's contributions (including omitted contributions) in the alternate investment program.**

SECTION 4. IC 5-10.2-2-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 12.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2009, by an employer.**

(b) As used in this section, "electronic funds transfer" has the meaning set forth in IC 4-8.1-2-7(f).

(c) Except as provided in subsection (e), an employer shall submit through the use of electronic funds transfer:

- (1) the employer contributions determined under section 11 of**

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this chapter; and

(2) contributions paid by or on behalf of a member under IC 5-10.3-7-9 or IC 5-10.4-4-11.

(d) Except as provided in subsection (e), an employer shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records described in:

(1) IC 5-10.3-7-12.5, for the public employees' retirement fund; or

(2) IC 5-10.4-7-6, for the Indiana state teachers' retirement fund.

(e) An employer that is unable to comply with either subsection (c) or (d), or both, may request that the board grant a waiver of the requirement of subsection (c) or (d), or both. The employer must:

(1) state the reason for requesting the waiver;

(2) provide a date, not to exceed two (2) years from the date the employer is first subject to either the electronic funds transfer requirement or the electronic reporting requirement of this section, by which the employer agrees to comply with the requirement of subsection (c) or (d), or both; and

(3) sign and verify the waiver form.

(f) The board may:

(1) grant the employer's request for a waiver; and

(2) specify the date by which the employer is required to comply with the electronic funds transfer requirement or the electronic reporting requirement, or both.

(g) The board shall establish a waiver form consistent with this section.

(h) The board may establish or amend its rules or policies as necessary to administer this section.

SECTION 5. IC 5-10.2-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. ~~Suspension of Membership.~~ (a) A member who is not eligible for retirement or disability retirement may suspend ~~his~~ **the member's** membership if ~~he~~ **the member** terminates employment.

(b) After five (5) continuous years in which ~~he~~ **the member** performs no service, ~~his~~ **the member's** membership shall be automatically suspended by the board unless ~~he~~ **is the member** has vested status.

(c) The board may suspend a member's membership in the fund if:

(1) the member has not performed any service in a covered position during the past two (2) years;

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- (2) the member has not attained vested status in the fund; and
- (3) the value of the member's annuity savings account is not more than ~~two hundred one thousand~~ dollars (~~\$200~~). **(\$1,000).**

(d) On resuming service the member may claim as creditable service the period of employment before the suspension of membership, but only to the extent that the same period of employment is not being used by another governmental plan for purposes of the member's benefit in the other governmental plan.

SECTION 6. IC 5-10.3-7-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12.5. **(a)** An employer or department ~~must~~ **shall** make the reports, membership records, or payments required by IC 5-10.3-6 or by sections 10 through 12 of this chapter:

- (1)** not more than thirty (30) days after the end of the calendar quarter, if applicable; ~~or~~
- (2)** another due date specified in sections 10 through 12 of this chapter; **or**
- (3) an alternate due date established by the rules of the board.**

(b) If the employer or department does not make the reports, records, or payments within ~~that the time~~ **specified in subsection (a):**

- (1)** the board may fine the employer or department one hundred dollars (\$100) for each additional day that the reports, records, or payments are late, to be withheld under IC 5-10.3-6-7; and
- (2)** if the employer or department is habitually late, as determined by the board, the board shall report the employer or the department to the auditor of state for additional withholding under IC 5-10.3-6-7.

(c) After December 31, 2009, an employer or department shall submit:

- (1) the reports and records described in subsection (a) in a uniform format through a secure connection over the Internet or through other electronic means specified by the board in accordance with IC 5-10.2-2-12.5; and**
 - (2) both:**
 - (A) employer contributions determined under IC 5-10.2-2-11; and**
 - (B) contributions paid by or on behalf of a member under section 9 of this chapter;**
- by electronic funds transfer in accordance with IC 5-10.2-2-12.5.**

SECTION 7. IC 5-10.4-7-6, AS ADDED BY P.L.2-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,

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2009]: Sec. 6. (a) As used in this section, "net contributions" means the gross amount of a member's contributions minus any refund paid or due a teacher.

(b) Not later than January 15, April 15, July 15, and October 15 of each year **or an alternate due date established by the rules of the board**, the treasurer of a school corporation, the township trustee, or the appropriate officer of any other institution covered by the fund shall make an employer report as provided in section 7 of this chapter, on a form furnished by the board, to the board accompanied by a warrant for payment of:

- (1) the total net contributions to the fund made for or by the members in the preceding three (3) months; and
- (2) the employer contributions as required by section 11 of this chapter.

(c) Amendatory reports to correct errors or omissions may be required and made.

(d) After December 31, 2009, the treasurer of a school corporation, the township trustee, or the appropriate officer of any other institution covered by the fund shall submit:

- (1) the employer report described in section 7 of this chapter in a uniform format through a secure connection over the Internet or through other electronic means specified by the board in accordance with IC 5-10.2-2-12.5; and**
- (2) the:**

(A) employer contributions; and

(B) contributions paid by or on behalf of a member; described in subsection (b) by electronic funds transfer in accordance with IC 5-10.2-2-12.5.

SECTION 8. IC 5-10.4-7-7, AS AMENDED BY HEA 1198-2009, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Not later than January 15, April 15, July 15, and October 15 of each year **or an alternate due date established by the rules of the board**, the treasurer of a school corporation, the township trustee, or the appropriate officer of any other institution covered by the fund shall make a report to the board on a form furnished by the board and within the time set by the board. Amendatory reports to correct errors or omissions may be required and made.

(b) The report required by subsection (a) must include:

- (1) the name of each member employed in the preceding reporting period, except substitute teachers;
- (2) the total salary and other compensation paid for personal

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services to each member in the reporting period;

(3) the sum of contributions made for or by each member, except for a retired member who may not make contributions during a period of reemployment as provided under IC 5-10.2-4-8(d);

(4) the sum of employer contributions made by the school corporation or other institution, except for a retired member for whom or on whose behalf an employer may not make contributions during a period of reemployment as provided under IC 5-10.2-4-8(d);

(5) the number of days each member received salary or other compensation for teaching services; and

(6) any other information that the board determines necessary for the effective management of the fund.

(c) As often as the board determines necessary, the board may review or cause to be reviewed the pertinent records of any public entity contributing to the fund under this article.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

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